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Supreme Court U.S.
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No. 02-597

IN THE SUPREME COURT OF THE UNITED STATES

CAPITAL CASE

JEANNE WOODFORD, Warden,
California State Prison at San Quentin,
Petitioner,

vs.

MICHAEL WAYNE JENNINGS,
Respondent.

APPENDIX TO REPLY TO PETITION FOR WRIT OF CERTIORARI

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10 pp

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APPENDIX A

●PJLENTER=FAX

called to my attention any case that holds the normal general intent nature of involuntary manslaughter thereby becomes changed to a specific intent crime simply because the underlying misdemeanor is itself a specific intent crime, and I have suggested and recommended to the court that since it is I think, sufficiently clear in the instructions that underlying misdemeanor has a specific intent requirement, that the Court need not instruct the jury that in that instance the crime is involuntary manslaughter itself becomes a specific intent crime, and I propose that the instructions, therefore, as they are written now not be changed to so change that.

THE COURT: I have agreed with you, and as I understand it, Mr. Oliver, you have likewise agreed, have discussed it with your client, and he agrees?

MR. OLIVER: Yes, we have.

THE COURT: Is that correct, Mr. Jennings?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Mr. Oliver, do you wish to go on and comment, sir, on the subject of lessers?

MR. OLIVER: Yes, Your Honor.

I have discussed with my client the subject of lessers, and he has spent some time this morning reviewing not the finished package of instructions that has just been placed before us, but the instructions that we've been working from that through the word processor produced the packet of instructions that now sets before both my client and myself.

Through looking at those and discussing the instructions with me he is familiar with what lesser offenses

are being requested in this particular matter and that the instructions are going to deal with the topic of not only murder in the second degree but both forms of manslaughter that there will be lesser included offenses requested with reference to the charge of robbery and the charge of rape, and we have discussed this specific lessers that have been requested.

I have told him that particularly with reference to the rape charge there are additional lesser included offenses that might be requested such as assault with intent to commit rape. I have discussed with him those possible lesser offenses.

Mr. Jennings, I am confident, understands what those lesser offenses would be, and he has indicated that he would concur in my judgment that we go with only those lesser offenses that he has seen contained within the instructions that are about to be given to the jury or actually from the instructions that parented these instructions that are now about to be read for the jury.

So, I'm confident that he understands the concept of lesser included offenses, that he understands the lesser offenses that are being requested in this matter.

There are a large number of them, and they are somewhat complicated, but we have spent some considerable time talking about them, and I am confident that he will concur in my judgment that the lesser included offenses as set forth in the present set of jury instructions about to be read to the jury be those lesser offenses that are

●PCLENTER-FAX

given to the jury and no others; is that correct, Mr. Jennings?

THE DEFENDANT: Yes.

THE COURT: All right, sir, and as I understand it and I say this because it seems to have some magical meaning for the appellate courts, this is a tactical decision that is being made on your part?

MR. OLIVER: That's correct.

THE COURT: All right.

Mr. Pipes, do you wish to comment on the subject of lessers?

MR. PIPES: I do not.

THE COURT: On the topic of 250, Mike?

I don't know whether you want to make any statement. We have gone over and discussed as other offenses such things as drunk driving, possession of drugs, possession for sale, sale of drugs in a somewhat jokingly manner, even the subject of pandering, pimping, the Mann Act, conspiracy to commit these various offenses and so on, and I understand the Morrisson Case that suggests that there may be some sua sponte requirement, in fact, is not the law, although it is in Cal Jic and the Court is, therefore, willing to accede to the request that 2.50 as prepared by the two of you with the assistance of the Court be the instruction that is, in fact, given and even if the Court were to feel that some of the things should be covered sua sponte I would be hesitant to delve into the offenses over the objection of the defendant since it seems to me by the list and litany of some of the offenses that we've discussed that we would be running into

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IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

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THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. MICHAEL WAYNE JENNINGS, Defendant and Appellant.	NO. _____ Contra Costa County Superior Court No. 27180

REPORTER'S TRANSCRIPT ON APPEAL
IN THE SUPERIOR COURT, CONTRA COSTA COUNTY
BEFORE THE HONORABLE COLEMAN F. FANNIN, JUDGE
DEPARTMENT NUMBER ELEVEN

THURSDAY, FEBRUARY 2, 1984

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A P P E A R A N C E S

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BY: _____

FOR THE DEFENDANT AND APPELLANT:

_____

_____

_____

_____

REPORTED BY: MARTI J. BENESH, CSR #5682

APPENDIX B

SPECIAL CIRCUMSTANCES - MURDER IN COMMISSION OF RAPE

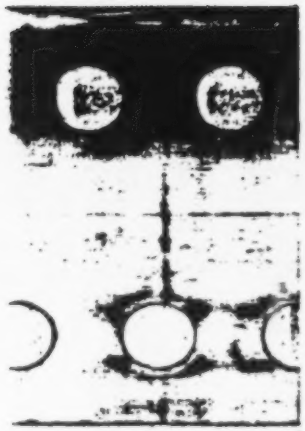
To find that the special circumstance, referred to in these instructions as murder in the commission of rape, is true, it must be proved:

1. That the killing was intentional;

2. That the defendant intended that the victim be killed;

3. That the murder was committed while the defendant was engaged in or while he was intentionally aiding or abetting in the commission or attempted commission of a rape;

4. That the murder was committed in order to carry out or advance the commission of the crime of rape or to facilitate the escape therefrom or to avoid detection therefor. The special circumstance referred to in this instruction is not established if the rape or attempted rape was merely incidental to the commission of the murder. A rape or attempted rape is incidental to the commission of a murder when the intent to commit the rape is formed for the first time after the death of the decedent.



CALJIC 8.81.17 (1980 Revision)
(Modified)

People v. Green, 27 Cal.3d 1;
164 Cal.Rptr. 1, 609 P.2d 468 (1980)

GIVEN: ✓

NOT GIVEN: _____

GIVEN AS MODIFIED: _____

_____

JUDGE OF THE SUPERIOR COURT

No. 02-597

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CERTIFICATE OF SERVICE

I hereby certify that three copies each of the foregoing Appendix to Reply to Petition for Writ of Certiorari have been mailed, by first class mail, prepaid, to JOHN DEIST, Deputy Attorney General, Counsel of Record for Petitioner, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, this 18th day of November, 2002. All persons required to be served have been so served.

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